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WHOLE ROAD FIGHT HINGES UPON MEANING OF 'REPAIRS' IN BILL

Counsel For Both Sides Argue
as to Extent of Work Done By
City Prior to Injunction

Argument was to be completed today in the injunction suit brought by Raymond C. Brown, acting for citizens and taxpayers of Manoa, against the city and county, the supervisors and other municipal officers, and it is expected that Circuit Judge T. B. Starr will at once take the matter under advisement preparatory to handing down a decision.

The argument of both sides has been lengthy and has dealt largely with the question of what does, and what does not, constitute maintenance, repair, and reconstruction in road work.

In the complaint the petitioner alleged that the work which was being done by the city and county on that portion of Queen street from the Nuuanu Stream to the prison road; the approach to the Hackfeld wharf and a section of road at the intersection of Beretania and King streets, in Mōhili II, was in excess of maintenance and repairs and therefore in violation of that section of the revised laws which provides for road work which shall be paid for out of public funds. The respondents contend that all the work was in the nature of repairs, and that it did not constitute reconstruction.

The argument as presented by Attorney Clarence H. Olson, counsel for the petitioner, has been, in effect, as follows:

What Does Act Mean?

In the first place, it was pointed out that the only question before the court was in the interpretation of the terms "repairs" and "maintenance" as used in an act of the legislature of 1915 and, in that connection, attention was called to the fact that this act provides a general scheme of road improvement on the assessment plan, under which road improvements and reconstruction may not be made out of the public treasury, with the exception of ordinary repairs and maintenance.

The improving of roads, as covered in the statute, covers new work curbing, altering and improving streets or any parts thereof, and therefore anything that is real reconstruction. Whether or not, in any case, work that is done on a street is reconstruction or repairs, is therefore the test, counsel argued, and, according to the facts shown in the case, as well as the testimony of all the engineers who appeared as witnesses, there could be no question that the work on Queen street and the road running from Queen street to the wharves was reconstruction rather than repairs, because the entire surface was repaired with an asphalt-macadam pavement about six inches thick, Olson continued.

This pavement, counsel said, was more durable and more expensive than any pavement which had been on the streets before, and its cost was just as great as that of the original pavement.

On Beretania street, the testimony of the city and county engineer, L. M. Whitehouse, showed that the real purpose for filling the street was to bring the street up to grade in two sections where, for some reason, the road was considerably lower than the general grade of the street, stated counsel. Therefore that too was in fact new construction, although the claim was made that it was merely repairs.

Olson Swats Whitehouse.
"The only excuse for the work undertaken by the city officials in these instances is to be found in the theory expounded by the city and county engineer in his testimony when, yesterday morning he stated that, in his opinion, anything would be repairs, no matter how extensive, if done to restore a road to its original condition," counsel continued.

In other words, said Attorney Olson, if, at some time in the past, there had been a pavement on a portion of the road which had been worn thin

by heavy use and erosion, and that pavement had been entirely destroyed, under the head of repairs, according to the theory of Mr. Whitehouse, the county would be justified in building an entirely new pavement, because by so doing the street would be restored to its original paved condition.

This interpretation of the word "repairs," counsel continued, as used in the 1915 statute, would practically nullify the entire purpose of the act, since it would permit the city road department to go to almost any extent in altering and improving the streets of the city that have at some time in the past been paved.

"The legislature has seen fit to provide an assessment scheme for the improvement of highways, irrespective of the question of the policy of such a scheme," counsel declared. "This is not a question for the courts and there can be no reasonable doubt that the theory on which the county and its officials have proceeded with the work complained of is in violation of the plain spirit of the statute, and the decree of the court should be in conformity with the prayer of the petitioner, and an injunction issue," he concluded.

Cathcart Reviews Case.

Attorney J. W. Cathcart, representing the respondents, opened his argument with a general review of the testimony given by the witnesses called by both sides. This was done, counsel stated, with a view to showing the character of the work that was done on the streets in question, the condition of the streets prior to the beginning of the work, and the construction of the Queen street road as originally undertaken in 1904 or 1905, before the laying of the railway tracks.

Referring to the portion of Queen street in question, counsel stated he would endeavor to show that in 1904 or 1905 it was constructed with what is known as water-bound macadam pavement, that an official grade was established on the street, and that it was constructed according to that grade.

Counsel argued that there was a question as to whether a grade had been established by the government officials, and whether the pavement which was laid on the street was in conformity with that grade. No question as to the validity of the survey could arise, counsel claimed. The evidence showed that there was no established grade on the Beretania street road section in question, he added, while on Queen street the petitioner claimed that the grade had been changed.

Actual Grade Raised.

"That the actual grade has been raised, not changed," interrupted Attorney Olson.

"We say the road was built according to the established grade," retorted Attorney Cathcart.

"Does the petitioner claim that when we repair a street we must not raise it above its normal condition?" Mr. Cathcart added. "Does the petitioner claim that we cannot raise a street to its original grade?"

"As to reconstruction, whatever is involved in a change of grade means a change in the properly authorized grade," he went on.

Mr. Cathcart said that on the Beretania street section in question, no attempt was made to establish a legal grade. This road was laid out about two years ago, and was constructed of quarry rock. It had a grade, said counsel, and the work that was being done on it by the city and county at both ends was in conformity with that grade.

"As all these streets in question

stand today, nothing has been done to them that was considered reconstruction," Mr. Cathcart declared. "There is food for argument regarding Queen street, and we want a decision on that matter. There is no argument regarding Beretania."

Mr. Cathcart then made a statement to the effect that if the work that has been done in Queen street is to be construction, and if the court decides in that manner, then nearly every street in Honolulu will go to waste. **No New Foundation.**

"We claim that all this work is repair work, on the ground that, in repaving these streets, the foundations were not disturbed," argued Mr. Cathcart. "If the roads had been torn up, if the foundations had been removed and the work constituted the putting in of new foundations, it would be a different case. Here, however, these roads have only been resurfaced, using asphalt as a binder—the new binder that has come into use since the roads were first constructed."

Mr. Cathcart then cited a number of similar cases in which the definition of repairs has been set forth by a number of judges. Some of these definitions were as follows:

"To restore to a sound or good condition after injury or partial destruction."

"To mend, to repair that which has been partially destroyed."

"And," declared Mr. Cathcart, "we mended these roads; we restored them to their original condition."

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**MEMBER OF MARYLAND'S
CREW SWEARS BY FLAG**

This was a "red letter" day in the local federal court. The big American flag, presented to the court by the Sons of the American Revolution for the purpose of display at the time of admitting persons to citizenship, was used for the first time. Carl Ditsch, a native of Essen, Germany, and an officer on the U. S. cruiser Maryland, was the man who took the oath of allegiance. Ditsch was examined by Judge Charles F. Clemons, and the oath was administered by Clerk A. Edward Murthy.

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SMALL BOY CYCLING ON WRONG SIDE OF HIGHWAY COLLIDES WITH AN AUTO

A Japanese boy named Orimoto, who carries newspapers in Manoa valley, was coming down Manoa road below Punahou street at a high rate of speed at 5 o'clock this morning when he collided with a United States mail car driven by John Manoa. Manoa asserts that the boy was coming down the road on the left side of the street. The mail auto had just turned into Manoa road and the driver, on seeing the bicyclist, attempted to turn over to the other side of the road to avoid a collision. He was too late, however. The bicycle struck the fender of the car and the boy was thrown several yards on the road. He was picked up unconscious by Manoa and the ambulance was called. Orimoto was taken to Queen's hospital where it was given out that the only injuries received were bruises and cuts on the boy's face and hands.

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